

federal courts to interpret the Bankruptcy Code. *Chevron Oil Company v. H. Dobie* 40 NYS2d 712, 358 N.E. 2d 504, 389 N.Y.S. 2d 819 (1976); *State v. Wilkes*, 41NY 2d 655, 394 NYS2d 849 363NE 555 (1977). In addition, New York Courts have the authority to determine the effect of a debtor's discharge in bankruptcy on third parties such as insurers. *Lumberman Mutual Cas. Co. v. Morse Shoe Co.*, 218 AD2d 624, 630 NYS2d 1003 (1st Dept. 1995); *Vleming v. Chrysler Corp., Dodge Div.*, 90 AD2d 733, 455 NYS2d 293(2nd Dept. 1982).

21. It further settled, that with regard to the applicability of U.S.C. Section 524(e), the failure of a creditor to file a notice of claim does not bar the continuation of a claim by said creditor if there are third parties, such as insurers who are liable for said debt. *In re Jet Florida Systems, Inc.*, 883 F2d 970(11th Cir. 1989). What is more, 11 USC 524(e) promulgates that the discharge of debtors does not affect liability of any third-party such as liability insurers, liable for such debt or a pending lawsuit, thus the failure of a creditor to file a notice of claim in these circumstance does not bar the continuation of the claim by that creditor. *Id.*

22. Similarly, New York State Case Law specifically holds that a bankruptcy discharge does not bar a pending law suit where the debtor has liability insurance coverage for the events forming the basis of the law suit. *Roman v. Hudson Telegraph Associates*, 11AD3d 346, (1st Dept. 2004); *Lumbermans Mutual Casualty Company v. Morse Shoe Company*, 281 AD2d 624 (1st Dept. 1995); *Minafari v. United Artists Theatres, Inc.* 5 Misc23d 474 (Supreme Court, Westchester County 2004); *Adrian v. Czmus*, 153 Misc 2d 38 (Supreme Court New York County 1992).

23. New York Insurance Law Section 3420(a)(1) mandates:

10-11963-cgm Doc 3626-11 Filed 07/29/13 Entered 07/29/13 14:57:27 Exhibit J
Pg 7 of 57

"No policy or contract insuring against liability for injury to person, except as provided in subsection (g), hereof, or against liability for injury or destruction of, property shall be issued or delivered in this state, unless it contains in substance the following provisions or provisions which are equally or more favorable to the insured and judgment creditors so far as such provisions relate to judgment creditors: (1) A provision that the insolvency or bankruptcy of the person insured, or the insolvency of his estate, shall not release the insurer from payment of damages for injury sustained or loss occasioned during the life of and within the coverage of such policy or contract."

As noted, *supra*, 11 USC 524(e) permits recovery of a debt against any other entity obligated to pay or liable for such debt.

24. When 11 USC Section 524(a)(e) and Insurance Law Section 3420(a)(1) are read together, it is clear that an insurer is obligated to provide coverage and indemnify a defendant when the debtor defendant files bankrupt, provided, as here, the loss or event sued for occurs during the life of the policy. *Roman v. Hudson Telegraph Associates*, 11AD3d 346, (1st Dept. 2004); *Lumbermans Mutual Casualty Company v. Morse Shoe Company*, 281 AD2d 624 (1st Dept. 1995); *Minafari v. United Artists Theatres, Inc.* 5 Misc23d 474 (Supreme Court, Westchester County 2004); *Adrianiv. Czmus*, 153 Misc. 2d 38 (Supreme Court New York County 1992).

25. In fact the case at hand, is a personal injury claim that arose prior to the bankruptcy of HOLY FAMILY NURSING HOME is analogous to *Manfari*. In *Manfari* the personal injury plaintiff was permitted to continue their action against the debtor defendant despite the fact that the Federal Court had issued an order enjoining anyone from proceeding with suits against the debtor. The *Manfari* Court held that in these circumstances the plaintiff was not required to file a notice of claim in the bankruptcy proceeding. Similar results were reached in cases with similar facts *Adriani v. Czmus*, 153 MISC 2d 38 (Supreme Court New York County 1992) and *Green v. Welsh*, 965

F.2d 30 (2d Cir); Matter of Edgeworth, 993 F.2d 51 n.6 (5th Cir). Thus it is clear that plaintiff here is entitled to commence and continue her claim against these debtors up to the amount of the liability policy in existence at the time of decedent's residency and injury at HOLY FAMILY HOME.

26. Plaintiff is also entitled to maintain her action on the basis that she did not receive formal notice debtor's bankruptcy proceedings.

27. As detailed above plaintiff sent HIPPA complaint authorizations for decedent's medical records from HOLY FAMILY HOME to both HOLY FAMILY HOME and ST VINCENTS RISK ASSURANCE, prior to the Bankruptcy Bar Date. These authorizations clearly stated the purpose of the request was litigation. Thus the debtor had knowledge of plaintiff's claim.

28. Constitutional implications arise when a known creditor fails to receive formal notice of a bankruptcy proceeding. *In re Harlopoulos, 118 F3d 1240 (8th Cir. 1997).* A known creditor has the right to adequate notice and a meaningful opportunity to participate in the bankruptcy proceeding. *In re Avery, 124 B.R. 447 (Bankr. N.D. Ga. 1991).* Due process requires that a party receive notice, which is reasonably calculated, under all circumstances, to apprise interested parties of the pending action so that they can present view and protect their rights. *See Mullan v. Central Hanover Bank & Trust Co., 339 US 306 (1950).*

29. The liquidating trustee had advised that notice was published but did not state wherein, nevertheless, published notice is not formal notice and it is not reasonably, calculated to reach an individual plaintiff bringing a personal injury claim on behalf of her father who has no reason to follow corporate bankruptcies.

10-11963-cgm Doc 3626-11 Filed 07/29/13 Entered 07/29/13 14:57:27 Exhibit J
Pg 9 of 57

30. Exception to the discharge are found at Section 523(a)(3)(B) of the Bankruptcy Code which provides that a debt is not dischargeable if, as here, the debtor failed to list or schedule the debt of a known creditor which precludes the creditor the right to timely filing of a proof of claims. Where as here, the creditor plaintiff is known by the debtor defendants, but not given notice of the bar date, the creditor plaintiff is not required to file said notice of claim before the designated bar date, (*11 USCA Section 523 (c)(1); Fed. Rules Bankr.Poc., Rule 4007*).

31. Similarly, 11 USC Section 1141 does not discharge the debt of a creditor plaintiff that was known to a corporate debtor defendant, but the corporate debtor defendant failed to give notice to the creditor plaintiff of the bar date for filing proof of claim. *In re Adam Glass Service, Inc.*, 173 B.R. 842 (EDNY 1994); *1440 Richmond Realty Corp., v. Four Bridges Development Corp.* 188 Misc 2d 42 (Supreme Court Richmond County 2001). The burden rests on the debtor to establish that the known creditor had actual notice. (Emphasis Added). *Graber v. Gault*, 103 App. Div 511, 93 NYS 76; *Weiner Fur Corporation v. Levy City Ct. N.Y.* 40 NYS2d 344. Thus it is clear that plaintiff's personal injury claim which was known to the debtors prior to the bankruptcy bar date, and to whom no actual notice of said bar date was given is not discharged by debtor defendants' bankruptcy proceedings.

32. The United States Bankruptcy Court for the Southern District of Ohio has ruled that to permit discharge of a personal injury claim, where as here, the debtor defendant had knowledge of the claim prior to the Bar Date, yet failed to provide the claimant actual notice of the bankruptcy proceeding would violate the claimant's right to due process. *In the Matter of Federated Department Stores Corporation*, 158 B.R. 103.

(1993) quoting *Reliable Electric Co., Inc. V. Olson Constr. Co.* 726 F. 2d, 620 (10th Cir. 1984).

33. In *Federated*, an analogous matter, the *Federated* plaintiff maintained that *Federated* was well aware of her contingent liability for plaintiff's injuries prior to the bankruptcy bar date, and as a result that plaintiff should have been served with formal notice of same. Both the State Court and the Bankruptcy Court agreed. The Bankruptcy Court held that without receipt of formal notice which is "an elementary and fundamental requirement of due process in any proceeding which is to be afforded finality" the discharge in the confirmation order has no application to the plaintiff, and she is therefore entitled to proceed with the state court action with all rights to levy execution on any favorable judgement just as if there had never been a bankruptcy. *Federated*, quoting *Mullins v. Central Hanover Bank & Trust Co.*, 339 US 306, 70 S. Ct. 652 94 L.Ed. 865(1950);

34. As held in *Alam v. AMF Bowling Centers, Inc.*, 798 NYS2d 707 (Supreme Court Nassau Cty. 2004), in another highly analogous matter, a personal injury plaintiff would have no reason to know that a corporate debtor had filed for bankruptcy without formal notice, and without formal notice having been served prior to the bar date, plaintiff's claim was not barred by the bankruptcy discharge. The *Alam* Court went on to hold that since the defendant debtors failed to serve a known personal injury creditor with a contingent liability claim actual notice of the bankruptcy proceedings, plaintiff was permitted to continue her personal injury claim in state court.

35. From these cases it is clear, plaintiff's contingent personal injury claim may proceed against HOLY FAMILY HOME, ST. VINCENTS CATHOLIC MEDICAL CENTERS OF NEW YORK a/k/a SAINT VINCENT CATHOLIC MEDICAL CENTERS a/k/a SVCMC-ST VINCENTS MANHATTAN by virtue of liability

10-11963-cgm Doc 3626-11 Filed 07/29/13 Entered 07/29/13 14:57:27 Exhibit J
Pg 11 of 57

insurance outside of the property of the Bankruptcy Estate, or alternatively, on the basis of due process since the defendant debtors failed to provide plaintiff, a known contingent liability creditor, with actual notice of the bankruptcy proceedings or the bar date.

WHEREFORE, plaintiff asks for an Order granting her motion in its entirety.

No prior application has been made for the relief requested herein.

Dated: New York, New York
June 19, 2013

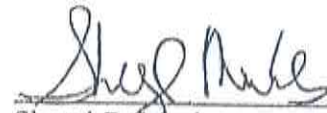

Sheryl R. Menkes
Attorney for Plaintiff
325 Broadway Suite 504
New York, New York 10007
(212) 285-0900

EXHIBIT A

VITAL RECORDS CERTIFICATE

DEATH TRANSCRIPT

DATE FILED THE CITY OF NEW YORK - DEPARTMENT OF HEALTH AND MENTAL HYGIENE

CERTIFICATE OF DEATH

Certificate No. 156-10-023455

NEW YORK
DEPARTMENT OF HEALTH
AND MENTAL HYGIENE
JUNE 14 2010 11:09 AM

1. DECEDENT'S LEGAL NAME: RONALD BROPHY

| | | | | | | |
|------------------------|-------------|---|---|---|---|--|
| 2a. New York City | 2b. Borough | 2c. Type of Home | 2d. Hospital Institution | 2e. Nursing Home Long Term Care Facility | 2f. Hospice Facility | 2g. Name of Institution (if not facility, name of place) |
| Brooklyn | Brooklyn | 1 <input type="checkbox"/> Hospital Institution | 2 <input type="checkbox"/> Emergency Dept./Outpatient | 3 <input type="checkbox"/> Decedent's Residence | 4 <input type="checkbox"/> Hospice Facility | 5 <input type="checkbox"/> Other Facility |
| Date and time of death | Month | Day | Year | Hour | Minute | Second |
| June | 13 | 2010 | 10:45 | PM | | |

8. Certifier: I certify that death occurred at the time, date and place indicated and that to the best of my knowledge traumatic injury or poisoning DID NOT play any part in causing death, and that death did not occur in any event that rendered it due entirely to NATURAL CAUSES. See instructions on reverse of certificate.

9. Signature of Certifier: [Signature]

Address: 6323 7th Avenue, Brooklyn, New York 11220

License No. 224025 Date JUN-14-2010

10. Usual Residence State: New York City

11. Date of Birth: December 20, 1920

12. Usual Residence State: New York City

13. Birthplace (City & State or Foreign): New York City, New York

14. Education (School, college, university, etc.): High School Graduate

15. Occupation (Job, profession, etc.): Sales Clerk

16. Marital Status: Married

17. Name of Spouse: [Name]

18. Name of Child: [Name]

19. Name of Child: [Name]

20. Name of Child: [Name]

21. Name of Child: [Name]

22. Name of Child: [Name]

23. Name of Child: [Name]

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46. Name of Child: [Name]

47. Name of Child: [Name]

48. Name of Child: [Name]

This is to certify that the foregoing is a true and correct copy of the original as filed in the Department of Health and Mental Hygiene, The City of New York, and that the same has been duly recorded in the official records of the City of New York.

[Signature]
[Name]

Not a valid record unless it contains a serial number and is signed by the Registrar.

[Signature]
[Name]

DATE ISSUED: June 15, 2010 Order No. 20100600029

[Signature]
[Name]

EXHIBIT B

CERTIFICATE OF DEATH

Exhibit No. 156-10-023455

1. DECEDENT'S LEGAL NAME: RONALD BROPHY

[illegible]

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| 7a. County | 8a. City | 9a. Date of Birth (Month) | 9b. Day | 9c. Year | 10a. Date of Birth (Month) | 10b. Day | 10c. Year | 11a. Date of Birth (Month) | 11b. Day | 11c. Year | 12a. Date of Birth (Month) | 12b. Day | 12c. Year | 13a. Date of Birth (Month) | 13b. Day | 13c. Year | 14a. Date of Birth (Month) | 14b. Day | 14c. Year | 15a. Date of Birth (Month) | 15b. Day | 15c. Year | 16a. Date of Birth (Month) | 16b. Day | 16c. Year | 17a. Date of Birth (Month) | 17b. Day | 17c. Year | 18a. Date of Birth (Month) | 18b. Day | 18c. Year | 19a. Date of Birth (Month) | 19b. Day | 19c. Year | 20a. Date of Birth (Month) | 20b. Day | 20c. Year | 21a. Date of Birth (Month) | 21b. Day | 21c. Year | 22a. Date of Birth (Month) | 22b. Day | 22c. Year | 23a. Date of Birth (Month) | 23b. Day | 23c. Year | 24a. Date of Birth (Month) | 24b. Day | 24c. Year | 25a. Date of Birth (Month) | 25b. Day | 25c. Year | 26a. Date of Birth (Month) | 26b. Day | 26c. Year | 27a. Date of Birth (Month) | 27b. Day | 27c. Year | 28a. Date of Birth (Month) | 28b. Day | 28c. Year | 29a. Date of Birth (Month) | 29b. Day | 29c. Year | 30a. Date of Birth (Month) | 30b. Day | 30c. Year | 31a. Date of Birth (Month) | 31b. Day | 31c. Year | 32a. Date of Birth (Month) | 32b. Day | 32c. Year | 33a. Date of Birth (Month) | 33b. Day | 33c. Year | 34a. Date of Birth (Month) | 34b. Day | 34c. Year | 35a. Date of Birth (Month) | 35b. Day | 35c. Year | 36a. Date of Birth (Month) | 36b. Day | 36c. Year | 37a. Date of Birth (Month) | 37b. Day | 37c. Year | 38a. Date of Birth (Month) | 38b. Day | 38c. Year | 39a. Date of Birth (Month) | 39b. Day | 39c. Year | 40a. Date of Birth (Month) | 40b. Day | 40c. Year | 41a. Date of Birth (Month) | 41b. Day | 41c. Year | 42a. Date of Birth (Month) | 42b. Day | 42c. Year | 43a. Date of Birth (Month) | 43b. Day | 43c. Year | 44a. Date of Birth (Month) | 44b. Day | 44c. Year | 45a. Date of Birth (Month) | 45b. Day | 45c. Year | 46a. Date of Birth (Month) | 46b. Day | 46c. Year | 47a. Date of Birth (Month) | 47b. Day | 47c. Year | 48a. Date of Birth (Month) | 48b. Day | 48c. Year | 49a. Date of Birth (Month) | 49b. Day | 49c. Year | 50a. Date of Birth (Month) | 50b. Day | 50c. Year | 51a. Date of Birth (Month) | 51b. Day | 51c. Year | 52a. Date of Birth (Month) | 52b. Day | 52c. Year | 53a. Date of Birth (Month) | 53b. Day | 53c. Year | 54a. Date of Birth (Month) | 54b. Day | 54c. Year | 55a. Date of Birth (Month) | 55b. Day | 55c. Year | 56a. Date of Birth (Month) | 56b. Day | 56c. Year | 57a. Date of Birth (Month) | 57b. Day | 57c. Year | 58a. Date of Birth (Month) | 58b. Day | 58c. Year | 59a. Date of Birth (Month) | 59b. Day | 59c. Year | 60a. Date of Birth (Month) | 60b. Day | 60c. Year | 61a. Date of Birth (Month) | 61b. Day | 61c. Year | 62a. Date of Birth (Month) | 62b. Day | 62c. Year | 63a. Date of Birth (Month) | 63b. Day | 63c. Year | 64a. Date of Birth (Month) | 64b. Day | 64c. Year | 65a. Date of Birth (Month) | 65b. Day | 65c. Year | 66a. Date of Birth (Month) | 66b. Day | 66c. Year | 67a. Date of Birth (Month) | 67b. Day | 67c. Year | 68a. Date of Birth (Month) | 68b. Day | 68c. Year | 69a. Date of Birth (Month) | 69b. Day | 69c. Year | 70a. Date of Birth (Month) | 70b. Day | 70c. Year | 71a. Date of Birth (Month) | 71b. Day | 71c. Year | 72a. Date of Birth (Month) | 72b. Day | 72c. Year | 73a. Date of Birth (Month) | 73b. Day | 73c. Year | 74a. Date of Birth (Month) | 74b. Day | 74c. Year | 75a. Date of Birth (Month) | 75b. Day | 75c. Year | 76a. Date of Birth (Month) | 76b. Day | 76c. Year | 77a. Date of Birth (Month) | 77b. Day | 77c. Year | 78a. Date of Birth (Month) | 78b. Day | 78c. Year | 79a. Date of Birth (Month) | 79b. Day | 79c. Year | 80a. Date of Birth (Month) | 80b. Day | 80c. Year | 81a. Date of Birth (Month) | 81b. Day | 81c. Year | 82a. Date of Birth (Month) | 82b. Day | 82c. Year | 83a. Date of Birth (Month) | 83b. Day | 83c. Year | 84a. Date of Birth (Month) | 84b. Day | 84c. Year | 85a. Date of Birth (Month) | 85b. Day | 85c. Year | 86a. Date of Birth (Month) | 86b. Day | 86c. Year | 87a. Date of Birth (Month) | 87b. Day | 87c. Year | 88a. Date of Birth (Month) | 88b. Day | 88c. Year | 89a. Date of Birth (Month) | 89b. Day | 89c. Year | 90a. Date of Birth (Month) | 90b. Day | 90c. Year | 91a. Date of Birth (Month) | 91b. Day | 91c. Year | 92a. Date of Birth (Month) | 92b. Day | 92c. Year | 93a. Date of Birth (Month) | 93b. Day | 93c. Year | 94a. Date of Birth (Month) | 94b. Day | 94c. Year | 95a. Date of Birth (Month) | 95b. Day | 95c. Year | 96a. Date of Birth (Month) | 96b. Day | 96c. Year | 97a. Date of Birth (Month) | 97b. Day | 97c. Year | 98a. Date of Birth (Month) | 98b. Day | 98c. Year | 99a. Date of Birth (Month) | 99b. Day | 99c. Year | 100a. Date of Birth (Month) | 100b. Day | 100c. Year |
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|--|---|--|-------------------------------------|---|---|
| 11. Name of Donor (Type in words or initials) Dale H. Johnson 15505 26th St St. Louis, MO 63125 | 12. Division (City & State or Foreign Country) St. Louis, MO | 13. Amount of Contribution \$100.00 | 14. Date of Contribution 10/1/80 | 15. Name of Benefactor (Type in words or initials) Dale H. Johnson | 16. Address of Benefactor 15505 26th St St. Louis, MO 63125 |
| 17. Division (City & State or Foreign Country) New York, New York | | | | | |
| 18. Name of Donor (Type in words or initials) The New York City Board of Education | | | | | |
| 19. Amount of Contribution \$100.00 | | | | | |
| 20. Date of Contribution 10/1/80 | | | | | |
| 21. Name of Benefactor (Type in words or initials) The New York City Board of Education | | | | | |
| 22. Address of Benefactor 100 W. 4th St New York, NY 10011 | | | | | |

[illegible][illegible]

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| To, Location of Disposition (City & State or Foreign Postbox) | | 214. Order No. |
| New York, New York | | 104D |
| Date of Disposition | | |

Eastwood Memorial Chapel, Inc. 199 Bleecker Street, New York, New York 10012

It is in fact, as the foregoing is a true copy of a record kept in the Dangal district office and is authentic. The deposition of the said Mr. Mahabub Khan does not conform to the statement and there is no robbery in the district of Dera Ismail Khan.

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DATE ISSUED: June 15, 2010 Order No: 20100608629

John P. Edwards
Sergeant, 1st Cavalry Division



10-11963-cgm Doc 3626-11 Filed 07/29/13 Entered 07/29/13 14:57:27 Exhibit J
Pg 16 of 57

EXHIBIT C